

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Chris Langer,
Plaintiff,

v.

Dollar Tree Stores, Inc, a Virginia
Corporation; and Does 1-10,
Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Chris Langer ("Plaintiff") complains of Dollar Tree Stores, Inc.,
a Virginia Corporation; and Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a disabled individual and a member of a protected class of
persons under the Americans with Disabilities Act. Plaintiff suffers from
Delayed Endolymphatic Hydrops (DEH) which has caused permanent partial
hearing loss. He utilizes a variety of assistive listening devices in his day to day
life, including hearing aids and headphones to compensate, though this still
does not enable him to receive complete aural communication. When
consuming audio content such as movies or tutorials on the internet he turns

1 on closed captioning in order to comprehend all of the content.

2 2. Defendant Dollar Tree Stores, Inc., (“DTS”) owned or operated the
3 Dollar Tree Stores located throughout California, including several within the
4 Northern District of California, in July 2020.

5 3. Defendant Dollar Tree Stores, Inc. owns and/or operates the Dollar
6 Tree Stores located throughout California, including several within the
7 Northern District of California currently.

8 4. Defendant Dollar Tree Stores, Inc. owned or operated the Dollar Tree
9 Stores’ website (“Website”) in July 2020.

10 5. Defendant Dollar Tree Stores, Inc. owns or operates the Dollar Tree
11 Stores’ website currently.

12 6. Plaintiff does not know the true names of Defendants, their business
13 capacities, their ownership connection to the property and business, or their
14 relative responsibilities in causing the access violations herein complained of,
15 and alleges a joint venture and common enterprise by all such Defendants.
16 Plaintiff is informed and believes that each of the Defendants herein,
17 including Does 1 through 10, inclusive, is responsible in some capacity for the
18 events herein alleged, or is a necessary party for obtaining appropriate relief.
19 Plaintiff will seek leave to amend when the true names, capacities,
20 connections, and responsibilities of the Defendants and Does 1 through 10,
21 inclusive, are ascertained.

22
23 **JURISDICTION & VENUE:**

24 7. The Court has subject matter jurisdiction over the action pursuant to 28
25 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

27 8. This court has supplemental jurisdiction over Plaintiff’s non-federal
28 claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are

1 formed from the same case and/or controversy and are related to Plaintiff's
2 ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

3 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant
4 is subject to personal jurisdiction in this District due to its business contacts
5 with the District.

6
7 **FACTUAL ALLEGATIONS:**

8 10. Plaintiff suffers from hearing loss and is a member of a protected class
9 under the ADA. Plaintiff is proficient with and uses SRS to access the internet
10 and read internet content on computers and mobile devices.

11 11. Plaintiff relies on subtitles and closed captioning to hear audio in
12 recorded content.

13 12. DTS operates "brick and mortar" facilities throughout California, open
14 to the public, places of public accommodation, and business establishments.

15 13. DTS offers videos on its Website to induce customers to purchase its
16 good and to provide ideas on how to best use them. Websites and videos are
17 some of the facilities, privileges, or advantages offered by Defendants to
18 patrons of DTS.¹

19 14. Plaintiff was a prospective customer who wished to access Defendant's
20 goods and services.

21 15. Plaintiff visited the Website several times in July 2020 to shop and view
22 video content on the Website.

23 16. When Plaintiff attempted to view video content on the Website, he
24 discovered that the videos lacked closed captioning, which made him unable
25 to fully understand and consume the contents of the videos.

26 17. Plaintiff experienced difficulty and discomfort in attempting to view
27

28

1 This website could be accessed at: <https://dollartree.com> as of July 2020

1 videos including: “Sunbeam Warm White 9-Watt Medium Base LED Light
2 Bulbs”; “Dollar Tree & Family Dollar | Logistics”, “Over 5,000 Dollar Tree
3 Stores Carry Frozen and Refrigerated...”, and “Dollar Tree Floral Wedding
4 Ideas”. As a result of the inaccessibility he was deterred from further use of the
5 Website.

6 18. Currently, the Defendants either fail to provide an accessible website or
7 Defendants have failed to maintain in working and useable conditions those
8 website features required to provide ready access to persons with disabilities.

9 19. Despite multiple attempts to access the Website using Plaintiff’s
10 computer, Plaintiff has been denied the full use and enjoyment of the facilities,
11 goods and services offered by Defendants as a result of the accessibility
12 barriers.

13 20. Plaintiff personally encountered accessibility barriers and has actual
14 knowledge of them.

15 21. By failing to provide an accessible website, the defendants denied
16 Plaintiff full and equal access to the facilities privileges or advantages offered
17 to their customers.

18 22. Plaintiff has been deterred from returning to the website as a result of
19 these prior experiences.

20 23. The failure to provide accessible facilities created difficulty and
21 discomfort for the Plaintiff.

22 24. If the Website had been constructed equally accessible to all individuals,
23 Plaintiff would have been able to navigate the website and reserve a room.

24 25. Additionally, Plaintiff is a tester in this litigation and seeks future
25 compliance with all federal and state laws. Plaintiff will return to the
26 Defendants’ website to avail himself of its goods and/or services and to
27 determine compliance with the disability access laws once it is represented to
28 him that DTS, its Website, and its facilities are accessible.

1 26. Plaintiff is currently deterred from doing so because of Plaintiff's
2 knowledge of the existing barriers and uncertainty about the existence of yet
3 other barriers on the site. If the barriers are not removed, Plaintiff will face
4 unlawful and discriminatory barriers again.

5 27. The barriers identified above violate easily accessible, well-established
6 industry standard guidelines for making digital content accessible to people
7 with hearing-impairments to access websites. Given the prevalence of
8 websites that have implemented these standards and created accessible digital
9 content, it is readily achievable to construct an accessible website without
10 undue burden on DTS or a fundamental alteration of the purpose of the
11 Website.

12 28. Compliance with W3C Web Content Accessibility Guidelines
13 ("WCAG") 2.0 AA standards are a viable remedy for these deficiencies and a
14 standard that has been adopted by California courts for website accessibility.

15 29. It's been established that failure to remove inaccessible website
16 conditions violates the ADA and California law and requiring compliance with
17 industry access standards is a remedy available to the plaintiff.

18 30. The website was intentionally designed, and based on information and
19 belief, it is the Defendants', policy and practice to deny Plaintiff access to the
20 website, and as a result, deny the goods and services that are otherwise
21 available to patrons of DTS.

22 31. Due to the failure to construct and operate the website in line with
23 industry standards, Plaintiff has been denied equal access to Defendant's
24 stores and the various goods, services, privileges, opportunities and benefits
25 offered to the public by DTS.

26 32. Given the nature of the barriers and violations alleged herein, the
27 plaintiff alleges, on information and belief, that there are other violations and
28 barriers on the Website that relate to his disability. In addition to the barriers

he personally encountered, Plaintiff intends to seek removal of all barriers on the Website that relate to his disability. See *Doran v. 7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that once a plaintiff encounters one barrier, they can sue to have all barriers that relate to their disability removed regardless of whether they personally encountered the barrier).

33. Plaintiff will amend the complaint, to provide further notice regarding the scope of the additional demanded remediation in the event additional barriers are uncovered through discovery. However, please be on notice that the plaintiff seeks to have all barriers related to his disability remedied.

I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (On behalf of Plaintiff and against all Defendants.) (42 U.S.C. section 12101, et seq.)

34. Plaintiff re-pleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. Defendant is a public accommodation with the definition of Title III of the ADA, 42 USC § 12181.

35. The website provided by the Defendant is a service, privilege or advantage of Defendant's brick and mortar facility.

36. When a business provides services such as a website, it must provide an accessible website.

37. Here, access to an accessible website has not been provided. A failure to provide an accessible website is unlawful discrimination against persons with disabilities.

38. Under the ADA, it is an act of discrimination to fail to ensure that the privileges, advantages, accommodations, facilities, goods and services of any place of public accommodation is offered on a full and equal basis by anyone who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.

§ 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford goods, services, facilities, privileges, advantages, or accommodations to individuals with disabilities, unless the accommodation would work a fundamental alteration of those services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

39. Here, the failure to ensure that the accessible facilities were available and ready to be used by the plaintiff is a violation of the law.

40. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights set forth and incorporated therein, Plaintiff requests relief as set forth below.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

41. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code §51(b).

42. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

43. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

44. Because the violation of the Unruh Civil Rights Act resulted in difficulty,

discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

45. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights set forth and incorporated therein, Plaintiff requests relief as set forth below.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. A Declaratory Judgment that at the commencement of this action Defendants were in violation of the requirements of the ADA due to Defendants' failures to take action to ensure that its websites were fully accessible to and independently usable by hearing-impaired individuals.

2. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction enjoining Defendants from violating the ADA with respect to its website.

3. Damages under the Unruh Civil Rights Act § 51², which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code § 52.

Dated: July 31, 2020

CENTER FOR DISABILITY ACCESS

By:



Russell Handy, Esq.
Attorney for Plaintiff

² Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

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